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7 BEFORE THE INSURANCE COMMISSIONER
8 OF THE STATE OF WASHINGTON

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10 In the Matter of the Application
11 regarding the Conversion and
12 Acquisition of Control of Premera Blue
13 Cross and its Affiliates

No. G 02-45

PREMERA'S MOTION FOR REVIEW
OF A PROVISION OF THE
PROTECTIVE ORDER
RECOMMENDED BY THE SPECIAL
MASTER

14 PREMERA and Premera Blue Cross (collectively "Premera") hereby move the
15 Commissioner, pursuant to paragraph 4 of the Seventh Order herein, to review a provision
16 in the proposed Protective Order ("Protective Order") that the Special Master has
17 forwarded to the Commissioner..

18 The Requested Change

19 Premera requests that a new sentence be added to the first paragraph of Section 4,
20 "Experts and Consultants."

21 The first paragraph currently reads:

22 The experts and consultants described in subsection 3(a)
23 above (other than the OIC Staff's and the ADI Staff's
24 consultants) shall include only persons or entities that
25 neither compete directly nor indirectly with, nor are
currently or regularly employed or engaged by persons or
entities that compete directly or indirectly with, the party

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1 whose Confidential Information or (if permitted under
2 subsection 3(b)(ii)) Attorneys' Eyes Only Information is
3 sought to be disclosed to such experts or consultants.
4 "Compete with," as used herein, means to offer comparable
5 products or services to those offered by the designating
6 party, within a geographic area currently served by the
7 designated party.

8 Premera requests that the following sentence be added at the end of the above-
9 quoted paragraph: "Furthermore, the experts and consultants described in subsection 3(a)
10 above (other than the OIC Staff's and the ADI Staff's consultants) shall include only
11 persons or entities that are not currently or regularly employed or engaged by parties with
12 whom the producing party does business."

13 The Need for the Requested Change

14 Premera requests this change because of the risk of disclosure or misuse of its
15 trade secrets. Using as experts those who are currently or regularly employed or engaged
16 by parties with whom the producing party does business creates the same risk of
17 disclosure and misuse of trade secrets as does the use of experts who are currently or
18 regularly employed or engaged by competitors of the producing party.

19 For example, even though hospitals are not competitors of Premera, Premera does
20 business with many Washington hospitals. If such hospitals were to obtain access to
21 Premera's trade secrets (such as its business plans), the hospitals could use such
22 information to their economic advantage -- and to the economic disadvantage of
23 Premera, its subscribers and the public.

24 The Special Master did not get an Opportunity to Consider this Request

25 The need for this Motion for Review arises not because of any error on the part of
the Special Master, but because Premera's attorneys inadvertently failed to think to ask for
the inclusion of such language during the course of the meeting and communications that

1 the parties had with the Special Master. It was only after the Special Master issued his
2 final recommendation on May 2nd that Premera's attorneys noticed the issue.

3 The only excuse Premera's attorneys can offer is that this was a lengthy order,
4 with lots of redlining of drafts and competing language, and hence it was overlooked.

5 Premera's attorneys did catch¹ part of the issue, and the Special Master ruled in
6 Premera's favor when that happened. The Protective Order states, at page 2, lines 14 to
7 23, that

8 [a]bsent a protective order . . . a significant risk exists that
9 trade secrets and non-public proprietary business
10 information might be used by the producing party's
11 competitors, customers or other parties with whom the
12 producing party does business Disclosure of such
information to the public, competitors, customers or other
parties doing business with the producing entity may be
seriously detrimental to the entity producing the
information.

13 Thus, the findings in the Protective Order recognize the risk that a customer or
14 other party with whom the producing party does business could obtain its trade secrets.
15 Adding the sentence that Premera now proposes at the end of the first paragraph of
16 Section 4 will provide a mechanism to prevent the problem from occurring.

17 Conclusion

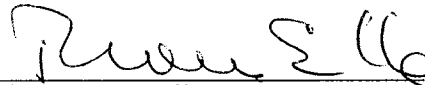
18 Premera respectfully submits that the Commissioner should add the requested
19 sentence to ensure that there is appropriate protection for the Confidential
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22 ¹ Speaking of catches, Premera also asks that the Commissioner make the following
23 clarification in the final Protective Order that he issues. In Appendix A of Protective
24 Order, at page 26, lines 1-2, the language currently reads: "permitted under the provisions
25 of the Protective Order and other persons permitted access to such material . . ." The
phrase "and other persons" is a little unclear. Premera would suggest: "permitted under
the provisions of the Protective Order, other than persons permitted access to such
material . . ."

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3 Information and Attorneys' Eyes Only Information of every party.

4 DATED this 7th day of May, 2003.

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6 PRESTON GATES & ELLIS LLP

7
8 By 
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10 Robert B. Mitchell, WSBA # 10874
11 Attorneys for PREMERA and
12 Premera Blue Cross
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PREMERA'S MOTION FOR REVIEW OF A
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